# BEFORE THE REAL ESTATE COMMISSION STATE OF NEVADA

SHARATH CHANDRA, Administrator, REAL ESTATE DIVISION, DEPARTMENT OF BUSINESS & INDUSTRY, STATE OF NEVADA,

Petitioner,

VS.

MALCOLM B. BOOT,

Respondent.

Case No. 2020-815

FILED

NOV 0 4 2022

REAL ESTATE COMMISSION
BY Kelly Valader

## COMPLAINT AND NOTICE OF HEARING

The REAL ESTATE DIVISION OF THE DEPARTMENT OF BUSINESS AND INDUSTRY OF THE STATE OF NEVADA ("Division") hereby notifies RESPONDENT MALCOLM B. BOOT ("RESPONDENT") of an administrative hearing before the STATE OF NEVADA REAL ESTATE COMMISSION ("Commission"). The hearing will be held pursuant to Chapters 233B and Chapter 645 of the Nevada Revised Statutes ("NRS") and Chapter 645 of the Nevada Administrative Code ("NAC"). The purpose of the hearing is to consider the allegations stated below and to determine if the RESPONDENT should be subject to an administrative penalty as set forth in NRS 645.630 and/or NRS 622.400, and the discipline to be imposed, if violations of law are proven.

## **JURISDICTION**

RESPONDENT was at all relevant times mentioned in this Complaint licensed as a Salesperson under license number S.0055504 and is therefore subject to the jurisdiction of the Division and the Commission, and the provisions of NRS chapter 645 and NAC chapter 645.

#### **FACTUAL ALLEGATIONS**

- 1. In and around May 2020, RESPONDENT represented the seller of real property located at 73 Smokestone Court, Las Vegas, Nevada 89110 (the "Property"). BS 000428-33.
- 2. On May 2, 2020, the buyer and seller, through their agents, entered into a Residential Purchase Agreement for the purchase of the Property. BS 000411-23.

- 7. Later that morning, buyers' agent replies to RESPONDENT that buyers "are not set to arrive till Friday night [June 5, 2020] . . . I will give them your number and have them call you to set up a time where you can get [the desk]." BS 000066.
- 8. RESPONDENT replies to buyers' agent, "No Worries I will Mickey Mouse thing till after Friday. Thanks." BS 000067.
- 9. That same day, RESPONDENT entered the property using a spare key he still possessed and removed the built-in-desk from the Property. BS 000039-40.
- 10. After buyers' arrival to the Property on June 5, 2020, RESPONDENT returned to the Property to pay buyers \$300 for the desk and demanded that buyers sign a release before RESPONDENT paid them. After buyers' son stepped in, RESPONDENT paid buyers \$300 for the desk, handed over the spare key, and left. BS 000041.
- 11. On July 27, 2020, buyers' agent submitted a complaint to the Division against RESPONDENT, alleging RESPONDENT'S behavior was unethical when he used a spare key to enter the Property to take the desk. BS 000037-41.

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- 12. On September 9, 2020, the Division notified RESPONDENT the Division was in receipt of a complaint against him, and requested he complete Form 652, Affidavit, by September 24, 2020. BS 000004.
- 13. On September 23, 2020, RESPONDENT submitted his Affidavit to the Division, explaining he offered to purchase the desk from buyers for \$300, to which buyers agreed, if the desk was removed before their arrival. BS 000072-84.
- 14. RESPONDENT admits to entering the Property on June 3, 2020, with a spare key sellers entrusted him with, removing the built-in desk from the wall it was attached to, patching said wall, and returning to the Property to pay buyers for the desk already in RESPONDENT'S possession, and demanding they execute a "receipt to sign for the funds." BS 000074-84.
- 15. On November 25, 2020, the Division sent RESPONDENT a Notice of Violation with Imposition of Administrative Fine ("Notice of Imposition") via certified mail, noting that the Division Administrator found RESPONDENT in violation of NRS 645.633(1)(i) pursuant to NAC 645.605(1) and NRS 645.252(3)(a) and imposed a \$1,500 administrative fine against RESPONDENT due by December 29, 2020. BS 000007-12.
- 16. On December 17, 2020, RESPONDENT, by and through his attorney, sent the Division notice of his appeal of the Notice of Imposition. BS 000646-47.

## **VIOLATION OF LAW**

RESPONDENT has committed the following violation of law:

17. RESPONDENT violated NRS 645.633(1)(i) by engaging in conduct which constitutes deceitful, fraudulent or dishonest dealing pursuant to NAC 645.605(1) by failing to protect the public against unethical practices related to real estate when RESPONDENT entered the Property using a key entrusted to him as a real estate salesperson without the buyers' consent and removed a built-in-desk, a fixture, from the Property.

#### **DISCIPLINE AUTHORIZED**

Pursuant to NRS 645.630 and NRS 645.633, the Commission is empowered to impose an administrative fine up to \$10,000 per violation and suspend, revoke or place conditions on your license if warranted.

Additionally, under NRS 622.400, the Commission is authorized to impose costs of the proceeding upon RESPONDENT, including investigative costs and attorney's fees if the Commission otherwise imposes discipline on RESPONDENT.

Therefore, the Division requests that the Commission take such disciplinary action as it deems appropriate under the circumstances.

#### NOTICE OF HEARING

**PLEASE TAKE NOTICE**, that a disciplinary hearing has been set to consider the Administrative Complaint against the above-named Respondent in accordance with Chapters 233B and 645 of the Nevada Revised Statutes and Chapter 645 of the Nevada Administrative Code.

THE HEARING WILL TAKE PLACE on December 13, 2022, commencing at 9:00 a.m., or as soon thereafter as the Commission is able to hear the matter, and each day thereafter commencing at 9:00 a.m. through December 15, 2022, or earlier if the business of the Commission is concluded. The Commission meeting will be held on December 13, 2022, at the Nevada State Business Center, 3300 West Sahara Avenue, 4th Floor – Nevada Room, Las Vegas, Nevada 89102. The meeting will continue on December 14, 2022, at the Nevada State Business Center, 3300 West Sahara Avenue, 4th Floor – Nevada Room, Las Vegas, Nevada 89102, commencing at 9:00 a.m., and on December 15, 2022, should business not be concluded, starting at 9:00 a.m. at the Nevada State Business Center, 3300 West Sahara Avenue, 4th Floor – Nevada Room, Las Vegas, Nevada 89102.

STACKED CALENDAR: Your hearing is one of several hearings scheduled at the same time as part of a regular meeting of the Commission that is expected to last from December 13, 2022, through December 15, 2022, or earlier if the business of the Commission is concluded. Thus, your hearing may be continued until later in the day or from day to day. It is your responsibility to be present when your case is called. If you are not present when your hearing is called, a default may be entered against you and the Commission may decide the case as

if all allegations in the complaint were true. If you have any questions please call Kelly Valadez, Commission Coordinator (702) 486-4606.

YOUR RIGHTS AT THE HEARING: except as mentioned below, the hearing is an open meeting under Nevada's open meeting law, and may be attended by the public. After the evidence and arguments, the commission may conduct a closed meeting to discuss your alleged misconduct or professional competence. A verbatim record will be made by a certified court reporter. You are entitled to a copy of the transcript of the open and closed portions of the meeting, although you must pay for the transcription.

As the Respondent, you are specifically informed that you have the right to appear and be heard in your defense, either personally or through your counsel of choice. At the hearing, the Division has the burden of proving the allegations in the complaint and will call witnesses and present evidence against you. You have the right to respond and to present relevant evidence and argument on all issues involved. You have the right to call and examine witnesses, introduce exhibits, and cross-examine opposing witnesses on any matter relevant to the issues involved.

You have the right to request that the Commission issue subpoenas to compel witnesses to testify and/or evidence to be offered on your behalf. In making the request, you may be required to demonstrate the relevance of the witness' testimony and/or evidence. Other important rights you have are listed in NRS 645.680 through 645.990, NRS Chapter 233B, and NAC 645.810 through 645.875.

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1 The purpose of the hearing is to determine if the Respondent has violated NRS 645 and/or NAC 2 645 and if the allegations contained herein are substantially proven by the evidence presented and to 3 further determine what administrative penalty is to be assessed against the RESPONDENT, if any, pursuant to NRS 645.235, 645.633 and or 645.630. 4 5 DATED this 3 day of November, 2022. 6 7 State of Nevada/ Department of Business and Industry 8 Real Estate Division 9 By: 10 SHARATH CHANDRA, Administrator 3300 West Sahara Avenue, Suite 350 11 Las Vegas, Nevada 89102 12 13 AARON D. FORD Attorney General 14 /s/ Alma Orozco 15 By: ALMA OROZCO (Bar No. 15300) 16 Deputy Attorney General 17 555 E. Washington Ave. #3900 Las Vegas, Nevada 89101 18 (702) 486-3420 Attorneys for Real Estate Division 19 20 21 22 23 24 25 26 27 28